

September 2015/22

Policy development

Consultation

Responses should be using the online form by noon on Friday 23 October 2015.

This consultation seeks views on a proposed monitoring framework to be operated by HEFCE and intended to satisfy Government that 'relevant higher education bodies' are fulfilling their duty to have due regard to the need to prevent people being drawn into terrorism (the 'Prevent' duty).

The 'Prevent' duty

Consultation on a monitoring framework for the higher education sector

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The ‘Prevent’ duty: Consultation on a monitoring framework for the higher education sector

To	Heads of higher education institutions in England Heads of other relevant higher education bodies (see paragraph 8)
Of interest to those responsible for	Governance, Administration, Student services, Information technology, Security, Chaplaincy, Students’ unions, Higher education policy, Counter-terrorism policy
Reference	2015/22
Publication date	September 2015
Enquiries to	HEFCE ‘Prevent’ team, email prevent@hefce.ac.uk

Executive summary

Purpose

1. This consultation seeks views on a proposed monitoring framework to be operated by HEFCE and intended to satisfy Government that ‘relevant higher education bodies’ (RHEBs) (see paragraph 8) are fulfilling their duty to have due regard to the need to prevent people being drawn into terrorism (the ‘Prevent’ duty).

Key points

2. As part of the Government’s strategy to reduce terrorism in the UK, the Counter-Terrorism and Security Act 2015 (the Act) introduced a package of measures aimed at countering the risk of terrorism and radicalisation. Part 5 of the Act deals with the risk of people being drawn into terrorism and introduced the statutory ‘Prevent’ duty for a range of public and other bodies. Relevant higher education bodies became subject to the new ‘Prevent’ duty on 18 September 2015.
3. There are two sets of statutory guidance (see paragraph 30 and Annex C) which RHEBs will need to consider when carrying out the duty:
 - a. Guidance for bodies in all sectors covered by the duty.
 - b. Guidance specifically for the higher education (HE) sector.
4. The guidance for all sectors makes it clear that all bodies will be expected to establish senior management oversight arrangements, carry out a ‘Prevent’ risk assessment, and develop an action plan covering staff training arrangements and a range of other topics in the guidance. The guidance specifically for the HE sector highlights a number of additional areas specific to RHEBs which need to be taken into account, such as policies and procedures for managing events on campus, arrangements for welfare and chaplaincy support, and policies relating to the use of IT equipment.
5. The Secretary of State for Business Innovation and Skills has delegated the new statutory function of ‘monitoring authority’ to HEFCE, and requires us to develop and

implement a monitoring framework (see paragraph 21 and Annex A). The monitoring framework should enable us to assess whether relevant bodies are effectively fulfilling their new duty. RHEBs are required by law to provide us with the information we need to carry out the monitoring function. We are expected to report the outcome of our assessments to Government.

6. The Government has made it clear to us that, as soon as possible, we must establish that not only do RHEBs have policies and procedures to enable them to deliver the 'Prevent' duty but also that they are robust. In other words, we must satisfy ourselves that the policies and procedures appear to be fit for purpose before we can monitor their active implementation and effectiveness. This means that we will be asking for detailed documentation in the initial assessment phase, although we aim to reduce our requirements in subsequent years.

7. The proposed monitoring framework is linked closely to the Government's 'Prevent' guidance. As discussed in paragraphs 23 to 29 and Annex B the duty applies to a wide range of providers with very different institutional structures and cultures. It will therefore be the responsibility of providers to assess the risks in their own context and put in place appropriate and proportionate responses to those risks. HEFCE will assess whether the action plans, policies and processes set out by RHEBs are sufficient to respond to the issues identified in their risk assessments and take into account the areas highlighted in both sets of statutory guidance. When we publish the final monitoring framework we will provide further information on the kinds of factors we expect to be covered in reports to us. However, this will not be prescriptive or exhaustive.

8. The terms 'relevant higher education bodies', 'relevant bodies' and 'RHEBs' refer to a range of different institutions that provide higher education in England. In all cases the Act refers to the governing body or proprietor as having ultimate responsibility. For the purposes of this consultation, we have grouped HE providers into three kinds of relevant body, based on the extent to which HEFCE already engages with them:

- a. **Higher education providers that we fund directly**, and are subject to our full accountability oversight arrangements (referred to in this document as 'HEFCE-funded providers').
- b. **Providers that are subject to specific course designation processes administered by HEFCE** in order to provide advice to the Department for Business, Innovation and Skills (BIS) ('Alternative providers with specific course designation').
- c. **Other institutions that provide higher education** with which HEFCE has typically had little or no direct contact ('Other institutions').

The term **does not** include schools, sixth form colleges, further education colleges/corporations, students' unions or student societies.

9. The proposed framework has the following main elements:

Phase one – initial assessments

- a. During December 2015 and January 2016 we will require all RHEBs to send us a preliminary self-assessment report using a five-point scale, of their current level of compliance with the 'Prevent' duty guidance. (See template at Annex D.)
- b. During the spring and summer of 2016 we will require all relevant bodies to send us more detailed documentation about their 'Prevent' risk assessment and their policies and procedures for the topics covered by the 'Prevent' guidance, together with an updated self-assessment report. The submission dates will be different for each of the three groups (a to c) noted in paragraph 8.

Phase two – continuing monitoring

- c. After the initial assessments we will in subsequent years require an annual report from the governing body or proprietor of all relevant bodies demonstrating how they have actively delivered the Prevent duty. This will also be submitted at different dates – aligned to existing processes, where possible – for each group.
- d. Each year, we will also require a sample of RHEBs to submit the latest versions of their 'Prevent'-related documentation. We intend to cover all bodies on a five-yearly cycle.

10. As the monitoring authority, HEFCE has no role in investigating particular incidents linked to the 'Prevent' duty. However, we will expect all RHEBs to report all such serious incidents as they occur in order to reassure us that 'Prevent' processes have been reviewed and revised as necessary. We will follow our existing public interest disclosure (whistleblowing) policy in response to reports from third parties about an RHEB's approach to the 'Prevent' duty.

11. We will assess all the information we receive, liaising as necessary with individual RHEBs. We expect to provide feedback to the higher education sector generally on good practice that we identify. We will report to BIS at appropriate stages, including where we have serious or persistent concerns about the arrangements at any institution. BIS may refer such cases to the 'Prevent' Oversight Board – a Home Office committee that advises the Home Secretary. (The Home Secretary has the power to issue directions, although the 'Prevent' duty guidance states that this power will be used only when other options have been exhausted.)

Responding to this consultation

12. The closing date for responses is **noon on Friday 23 October 2015**. Responses should be made online at <https://www.surveymonkey.com/r/preventduty>. The consultation questions are throughout the document and are listed at Annex E.

13. Since the 'Prevent' duty is already in force, we have limited the consultation period to enable us to publish the final framework as soon as possible. We have however discussed the proposals in advance of the consultation with a number of individual RHEBs and with sector representative bodies, including Universities UK, GuildHE, Study UK and the Association of Heads of University Administration. We have also arranged for and funded

the Leadership Foundation for Higher Education to run events and training activities for senior managers and members of governing bodies. In addition, we will hold a number of meetings and engagement events with RHEBs during the consultation period. Further information will shortly be available about these at: www.hefce.ac.uk/reg/prevent/events/.

Freedom of Information Act

14. Information provided in response to this consultation may be made public, under the terms of the Freedom of Information Act or of an appropriate licence, or through another arrangement.

15. Such information includes text, data and datasets. The Freedom of Information Act gives a public right of access to any information held by a public authority defined within the Act, in this case HEFCE. It applies to information provided by individuals and organisations, for example universities and colleges. HEFCE can refuse to make such information available only in exceptional circumstances. This means that data and information are unlikely to be treated as confidential except in very particular circumstances.

Analysis of responses

16. HEFCE will commit to read, record and analyse the views of every response to this consultation in a consistent manner. For reasons of practicality, usually a fair and balanced summary of responses rather than the individual responses themselves will inform any decision made. In most cases, the merit of arguments made is likely to be given more weight than the number of times the same point is made. Responses from organisations or representative bodies which have high relevance or interest in the area under consultation, or are likely to be affected most by the proposals, are likely to carry more weight than those with little or none.

Publication

17. We will publish an analysis of the consultation responses and an explanation of how they were considered in our subsequent decision. Where we have not been able to respond to a significant and material issue raised, we will usually explain the reasons for this. It is our intention to publish all consultation responses when we publish our analysis. If you have any concerns about the publication of your response please ensure that you advise us of this in the comments box at the end of the second page of the online response form.

Background

18. The Government published the latest version of its 'Prevent' strategy in 2011, one of four strands of the wider counter-terrorism strategy, CONTEST. A key element of the 'Prevent' strategy is to encourage institutions and sectors, including higher education (HE), to address risks of radicalisation. The Counter-Terrorism and Security Act 2015 (the Act) introduced a package of measures aimed at countering the risk of terrorism and radicalisation. Part 5 of the Act puts hitherto voluntary elements of the 'Prevent' strategy onto a statutory footing.

19. It does this by placing a duty on a range of bodies – called 'specified authorities' for this purpose – to have due regard to the need to prevent people from being drawn into terrorism¹. This has become known as the 'Prevent' duty. Many organisations in the further and higher education sectors – the RHEBs – have been defined as specified authorities and became subject to the duty on 18 September 2015². The intention of the 'Prevent' duty is to ensure that all specified authorities assess the level of risks that people within their functional responsibilities may be drawn into terrorism, and have suitable policies and procedures in place to mitigate those risks. The Act requires³ the Government to publish guidance about particular topics that relevant bodies will be expected to address (see paragraph 30 and Annex C).

20. The Act⁴ also introduces new arrangements to monitor compliance by the further and higher education sectors with the 'Prevent' duty. (Existing inspection arrangements for other categories of specified authority were considered capable of extension to monitor their compliance with the new duty.) Specifically, the Secretary of State for Business Innovation and Skills was appointed to be the 'monitoring authority' for 'relevant further and higher education bodies' (see paragraph 23).

21. However, the Secretary of State was also given the power to delegate the monitoring authority function, and for higher education has delegated it to HEFCE. The delegation letter (see Annex A) envisages that the function will be carried out in accordance with a published monitoring framework.

22. The rest of this document proposes a monitoring framework that is linked closely to the government guidance to the sector on how to implement the 'Prevent' duty. Where possible, the framework uses dates and processes that are already familiar to HEFCE-funded providers and alternative providers with specific course designation. We intend our 'Prevent' assessments to be separate from those accountability and specific course designation processes, but they may become linked if a failure to adequately implement the 'Prevent' duty raises concerns about the underlying accountability of a HEFCE-funded provider, or affects our advice to BIS about an alternative provider with specific course designation.

¹ Counter-Terrorism and Security Act 2015 (CTSA) Section 26(1).

² CTSA (Commencement No. 2) Regulations 2015 (SI 2015 No. 1698)

³ CTSA S29.

⁴ CTSA S32.

Scope of the monitoring framework

Relevant higher education bodies

23. For the purposes of the Act⁵ and, therefore, of this monitoring framework, a relevant higher education body (RHEB) is:

‘... the governing body or proprietor of an institution in England that is either:

- a. A qualifying institution within the meaning of section 11 of the Higher Education Act 2004.
- b. An institution at which more than 250 students are undertaking courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).’

24. Schools, sixth form colleges, further education corporations, students’ unions and student societies are not RHEBs.

25. The two Acts referred to in paragraphs 23a and 23b encompass a wide range of institutions that provide higher education, as set out in Annex B. However, determining which of these providers are RHEBs is technically complex, and more detail about this is given in Annex B.

26. For monitoring purposes, we have identified three distinct groups of relevant body:

- a. **Higher education providers that we fund directly**, and are subject to our full accountability oversight arrangements (referred to in this document as ‘HEFCE-funded providers’).
- b. **Providers that are subject to specific course designation processes administered by HEFCE** in order to provide advice to the Department for Business, Innovation and Skills (BIS) (‘Alternative providers with specific course designation’).
- c. **Other institutions that provide higher education** with which HEFCE has typically had little or no direct contact (‘Other institutions’).

Although these groups are based on the extent to which they already have experience of HEFCE’s processes, we will be monitoring their ‘Prevent’ duty compliance even-handedly and separately from other assurance processes.

27. Some providers, including many alternative providers with specific course designation, were brought within the scope of the Act when Chapter 4 of Part 3 of the Consumer Rights Act 2015 (CRA2015) came into effect on 1 September 2015.

28. In due course, we intend to list on our website all of the organisations in the HE sector that we have identified as covered by the ‘Prevent’ duty and being subject to HEFCE’s monitoring framework. Initially, however, we may not be able to identify all RHEBs. HEFCE is not expected to monitor such unidentified bodies, but that does not remove their responsibility to meet their ‘Prevent’ duty obligations. As we become aware of previously unidentified organisations we will contact them and bring them within the monitoring framework.

⁵ CTSA S32(1).

29. Some – but not all – bodies that are subject to the ‘Prevent’ duty are also required by the Act⁶ to have particular regard to the duty to ensure freedom of speech on campus⁷ and to the importance of academic freedom⁸. Annex B sets out which providers these obligations apply to. However, in his letter delegating the monitoring authority function to HEFCE, the Secretary of State has made it clear that we should exercise that function on the basis that the freedom of speech and academic freedom obligations apply to all RHEBs.

‘Prevent’ duty guidance

30. All specified authorities are required by the Act⁹ to have regard to any guidance issued by the Government about how they should exercise their ‘Prevent’ duty. Such guidance, and any changes to it, have to be approved by Parliament. For the HE sector, the Home Secretary is required¹⁰ to have particular regard to the freedom of speech duty and the importance of academic freedom when issuing guidance and when considering whether to give directions to organisations.

31. It follows from the above that the Government’s ‘Prevent’ duty guidance is an important factor for RHEBs seeking to demonstrate compliance, and is central to HEFCE’s approach to monitoring them. The guidance has a number of general sections, broadly setting out principles that apply to all specified authorities, followed by sections that are sector-specific. The relevant sections are set out in full in Annex C and summarised below.

32. Revised ‘Prevent’ Duty Guidance: for England and Wales (pages 2 to 5):

- a. Explains that ‘due regard’ means that authorities should place an appropriate weight on preventing people being drawn into terrorism when considering all the other factors relevant to carrying out their normal functions.
- b. Links the duty clearly to the Government’s ‘Prevent’ strategy objectives, which are to:
 - i. Respond to the ideological challenge of terrorism and the threat from those who promote it.
 - ii. Prevent people being drawn into terrorism and ensure they are given appropriate advice and support.
 - iii. Work with sectors and institutions where there are risks of radicalisation that need to be addressed.
- c. Explains that preventing people being drawn into terrorism requires challenging extremist ideologies.
- d. Defines extremism as ‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of different faiths and beliefs’.

⁶ CTSA S31(2).

⁷ Education (No. 2) Act 1986 S43(1).

⁸ Education Reform Act 1988 S202(2)(a).

⁹ CTSA S29(2).

¹⁰ CTSA S31(3) and (4).

- e. States that all specified authorities should demonstrate awareness and understanding of the risk of radicalisation in their area or institution.
- f. Identifies three themes common to the specific guidance to all of the sectors covered by the 'Prevent' duty: effective leadership, partnership working, and appropriate capabilities.
- g. States explicitly that 'Prevent' programmes must not involve covert activity.
- h. Indicates issues to be considered (including the Data Protection Act 1998 and the Human Rights Act 1998) when specified authorities establish local information-sharing agreements.
- i. Describes Home Office arrangements for overseeing the operation of 'Prevent' activity and for addressing non-compliance with the new duty.

33. 'Prevent' Duty Guidance: for higher education institutions in England and Wales:

- a. Describes the context for implementing the 'Prevent' duty.
- b. Emphasises the need for a risk-based, proportionate approach, but requires institutions to have and to apply policies and procedures that address the general expectations of the guidance and are actively applied.
- c. Expects all RHEBs to address:
 - i. External speakers and events – There should be policies and procedures for managing events on campus and the use of premises. External speakers or events should not go ahead if risks cannot be fully mitigated.
 - ii. Partnership – Senior management (including, where appropriate, heads of institution) should actively engage with partners, including the police, the 'Prevent' coordinators, and students.
 - iii. Risk assessment – This should consider how and where students might be drawn into terrorism (including violent and non-violent extremism). Do student, staff welfare and other similar policies cover these issues? Are policies and procedures for events held by staff, students and third parties effective?
 - iv. Action plan – This should mitigate identified risks.
 - v. Staff training – Relevant staff should be appropriately trained.
 - vi. Information sharing (about vulnerable people) – Procedures and agreements should be in place.
 - vii. Welfare, pastoral care, chaplaincies – To include policies about prayer rooms.
 - viii. Information technology policies – Usage policies should cover the 'Prevent' duty, including filtering arrangements and access to security-sensitive online materials.
 - ix. Students' unions and societies – RHEBs should have policies about activities on campus in the context of the 'Prevent' duty.

- d. Suggests that students' unions (which are not covered by the 'Prevent' duty) would benefit from awareness training.

Monitoring principles

34. HEFCE has long been at the forefront of initiatives to reduce regulatory burden, seeking to apply the principles that regulation should be:
- a. Proportionate – We should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
 - b. Intelligent – We will gather intelligence and use data to inform our practice and employ judgement derived from expertise, experience and reflection.
 - c. Accountable – We should be subject to public scrutiny and able to justify our decisions.
 - d. Consistent – Rules and standards must be joined up and implemented fairly.
 - e. Transparent – We should be open, and keep regulations simple and user-friendly.
 - f. Targeted – Regulation should be focused on the problem and should minimise side effects.
35. We intend to apply these principles to our work as monitoring authority. However, our engagement with the sector during the first phase of initial assessments will be more intensive than when we move to the second phase of continuing monitoring. This is to enable us to make an early assessment of the extent to which institutions are already engaging actively with the 'Prevent' duty and whether their processes and activities are sufficient and proportionate for their own context and assessment of risk.
36. As autonomous bodies, it will be for institutions to decide how best to implement their responsibilities. HEFCE recognises that RHEBs are diverse in nature, varying greatly in size, structure and culture. We will not be issuing our own guidance to supplement the Government's 'Prevent' duty guidance. However, as we carry out our monitoring we may identify good practice, and we intend to highlight examples and case studies when reporting to Government and as feedback to the sector.

Information needed for monitoring purposes

Introduction

37. In the letter delegating the monitoring authority function to HEFCE, the Secretary of State has written: '... I hope HEFCE will be able to use and build on its existing monitoring and oversight processes as much as possible particularly in subsequent cycles.' This section of the monitoring framework describes how we intend to do so for the HEFCE-funded providers, and for alternative providers with specific course designation. For the other institutions that we are responsible for monitoring for compliance with the 'Prevent' duty (see Annex B) we will draw on existing processes as appropriate with a view to ensuring a fair and consistent approach to monitoring across the sector.

38. The Act requires¹¹ all RHEBs to provide HEFCE with any information we may require for the purposes of monitoring their performance in discharging the 'Prevent' duty. Such information¹² includes information specifying 'the steps that will be taken to ensure that [an RHEB] discharges the 'Prevent' duty'. If an RHEB fails to provide information, the Secretary of State may give directions to enforce compliance, and such directions themselves may be enforced by a court order¹³.

39. Against that background, we set out in paragraphs 43 to 66 the types of information that we consider we will need.

40. The Government has told HEFCE that we must establish as soon as possible that not only do RHEBs have policies and procedures to enable them to deliver the 'Prevent' duty but also that they are robust. In other words, we must be satisfied that these policies and procedures appear to be fit for purpose before we can monitor their active implementation and effectiveness. This means that we will be asking for detailed information in the initial assessment phase, with an expected reduction in requirements in subsequent years.

41. Much of the information we will ask for will be documentation prepared by RHEBs for their own use, and we would expect to collect it in its original format.

42. As far as possible, we will utilise our secure extranet facility for the submission of material, but we may need to supplement this with other collection methods. We will provide more information when we issue the details for each collection.

Phase one – initial assessment

43. The 'Prevent' duty came into force for the HE sector on 18 September 2015, after the final guidance was approved by Parliament. Although detailed wording of the guidance has changed since the first draft was published in December 2014, the general guidance and the topics addressed in the section specific to the HE sector are essentially the same. RHEBs have therefore had advance notice of the need to establish senior management oversight arrangements, carry out a 'Prevent' risk assessment covering each of the topics in the guidance, and develop an action plan and staff training programme appropriate to the assessed level of unmitigated risk.

44. The Government has indicated that HEFCE should report on implementation by the sector as soon as possible. We consider that this can be achieved by subdividing the initial assessment phase as follows:

- a. An early, preliminary self-assessment report.
- b. Later submission and assessment of detailed material.

Preliminary self-assessment report

45. In December 2015 and January 2016 we will require all RHEBs to send us a preliminary self-assessment of their state of preparedness.

46. We will confirm detailed timings for this self-assessment process when we publish the final monitoring framework after this consultation.

¹¹ CTSA S32(2).

¹² CTSA S32(3).

¹³ CTSA S33(1) and (2).

47. The form we are proposing to use for this report is at Annex D, and requires each institution to assess on a five-point scale the extent to which it has arrangements in place, including, where necessary, documented policies and processes for each of the factors in the statutory 'Prevent' duty guidance (see paragraph 50a and 50b below). The report should be signed by the accountable officer, chief executive or proprietor (as appropriate).

48. The five-point scale proposed for the self-assessment report is:

- A** Policies and processes have been documented. They have been reviewed, updated, approved in last three months, and are active. They fully satisfy the Government's 'Prevent' duty guidance.
- B** Policies and processes have been documented. They have been reviewed, updated, approved in the last year, and active. They may satisfy the Government's 'Prevent' duty guidance.
- C** Policies and processes have been documented, but need to be reviewed against the Government's 'Prevent' duty guidance.
- D** Policies and processes have been drafted, but not yet approved.
- E** Policies and processes have not been prepared yet.

Institutions that have assessed themselves to be C, D or E will need to indicate a timescale by when they will reach level A.

Consultation question 1

Do you consider the proposed self-assessment scale to be clear and to provide a suitable basis for a preliminary self-assessment of your institution's preparedness for the 'Prevent' duty?

How can we improve on the wording?

49. We intend to use this as the basis for a first report to Government on implementation across the sector. We will also provide feedback to institutions – either individually or sector-wide – to inform the later submission of more detailed information.

Submission of detailed material

50. Following submission of preliminary self-assessments and feedback from HEFCE we will require RHEBs to send us the following information to show that they have established appropriate arrangements to implement the 'Prevent' duty:

- a. A copy of the institution's:
 - 'Prevent' risk assessment
 - action plan in response to that risk assessment
 - policies and procedures for approving external speakers and events on campus and institution-branded events taking place off campus. (Such policies should reflect the institution's duty to ensure freedom of speech on campus and its arrangements to protect the importance of academic freedom.)

- b. A paper or report that summarises the institution's arrangements for:
- senior management and governance oversight of the implementation of its 'Prevent' duty obligations and engagement with 'Prevent' partners
 - engaging with and consulting students on the institution's plans for implementing the 'Prevent' duty
 - training appropriate staff about 'Prevent'
 - sharing information internally and externally about vulnerable individuals
 - sharing information about external speakers with other institutions (if not covered in the external speakers and events policies referred to in paragraph 50a)
 - ensuring sufficient pastoral care and chaplaincy support for all students (including arrangements for managing prayer and faith facilities)
 - the use of the institution's computer facilities (hardware, software, networks, social media), to include filtering arrangements and management of academic activities that might require access to sensitive or terrorism-related material
 - engaging with students' unions and societies, which are not subject to the 'Prevent' duty but are expected to cooperate with their institution.
- c. A 'Prevent' duty compliance self-assessment report, signed by the chair of the governing body or the proprietor, as appropriate. We envisage that this will be similar to the report of the preliminary self-assessment (by the HEFCE-funded providers) and use a similar five-point scale. However, we are likely to refine the questions and the assessment scale in the light of our experience of reviewing the preliminary reports from HEFCE-funded providers.

Consultation question 2

Given the Government's guidance on the 'Prevent' duty, are the factors in paragraph 50 a reasonable basis for HEFCE's assessment of compliance by RHEBs?

What other factors should be included, and why?

51. We envisage collecting the information from each of the three groups of provider on a different date – likely to be at two-monthly intervals – during the spring and summer of 2016.

52. We will review the submitted material – seeking clarifications as necessary – with a view to confirming that it is complete and provides satisfactory evidence that each RHEB has established appropriate arrangements to implement the 'Prevent' duty. Once we are satisfied on these matters we will write to the institution accordingly.

53. If we are not satisfied about any element of an RHEB's arrangements, we will require the submission of revised information within an agreed timeframe that is unlikely to be longer than two months from our notification. When giving notice of the need for

improvement, we would expect to indicate the aspects of concern. Again, once we are satisfied we will write to the institution.

54. After resubmission, we may conclude that the institution is making progress or that the issue is not fundamental to compliance, or both. In such a case we will seek to agree, or will impose, another timetable for the institution to provide satisfactory material. However, if we are still not satisfied we will assess whether the issues in question are sufficiently serious as to suggest that the institution is not complying with its 'Prevent' duty obligations. In that situation, we will need to report to BIS. BIS may, in turn, refer the matter to the Home Office's 'Prevent' Oversight Board which advises the Home Secretary as to whether further action is necessary.

Phase two – ongoing monitoring

55. At the end of the initial assessment phase we would expect to have reviewed detailed information from every RHEB. Beyond this, we intend to move to an ongoing monitoring process aimed at assessing the continuing effectiveness of institutions' policies and practices.

56. The ongoing monitoring process will involve:

- a. An annual report from the governing body or proprietor on the implementation of the 'Prevent' duty in the previous operating or academic year, including any significant developments up to the date of the report.
- b. Assessment on a five-yearly cycle of the detailed policies and procedures of an annual sample of RHEBs.

Annual report on implementation

57. We will require the governing bodies or proprietors of all RHEBs to send us an annual report on their implementation of the 'Prevent' duty during the last operating or academic year, including any significant developments up to the date of the report. Where possible we will aim to align the timing for these returns each year with the dates for other HEFCE accountability processes. Our proposed timetable for submitting these reports each year would be:

HEFCE-funded institutions:	1 December
Alternative providers with specific course designation:	1 February
Other institutions:	1 April

We will expect the first of these annual returns to be provided in December 2016 for HEFCE-funded institutions and February and April 2017 for Alternative providers with specific course designation and Other institutions respectively.

58. The annual report should demonstrate active engagement by the institution in delivering the 'Prevent' duty. It should:

- a. Address all of the topics listed in paragraph 50, describe activities undertaken during the period and provide evidence of their effectiveness. The use of case studies – particularly to illustrate impact – will be encouraged.

- b. Summarise data related to the 'Prevent' duty. This may include data about: events and speakers on campus, training programmes, information technology filtering, the number of people referred to local authority Channel Panels.

59. We considered requiring more frequent data reporting, but concluded that part-year information could be misleading because of different activity patterns in institutions through the year. Nevertheless, we believe that, in order to provide the declarations referred to in the next paragraph, governing bodies or proprietors will wish to consider – at least once a year – data about a range of 'Prevent'-related activities. We expect that, over time, the data provided will enable us to refine our understanding of the scale of issues facing individual institutions and to focus our monitoring more tightly.

60. We will require the annual reports to include the following three declarations by the governing body or proprietor:

'Throughout the academic year and up to the date of approval, the institution:

- I. has had due regard to the need to prevent people being drawn into terrorism (the 'Prevent' duty)
- II. has provided to HEFCE all required information about its implementation of the 'Prevent' duty
- III. has reported to HEFCE all serious issues related to the 'Prevent' duty, or now attaches any reports that should have been made with an explanation of why they were not submitted on a timely basis.'

Consultation question 3

Is the proposed content of the 'Prevent' duty annual report and the three declarations clear?
How can we improve it?

61. We will review the annual reports in the context of our understanding of the institution and of the sector generally. If we consider that individual reports have omissions or are in other ways inadequate, we will consider more detailed engagement in line with paragraphs 53 and 54. Once we are satisfied we will write to the institution accordingly. We will also consider whether it will be helpful to feed back any general issues to the sector as a whole.

62. We expect that these returns, and other information gathered throughout the year, will form the basis of an annual report to BIS.

Cyclical programme to review detailed material

63. As well as reviewing the annual reports we will carry out a rolling programme of more in-depth reviews intended to ensure that RHEBs are actively managing their 'Prevent' policies and procedures. Selection for this rolling programme is likely to be based on the outcomes of both the initial monitoring and our reviews of annual reports, but with some institutions selected on a random basis. We intend that all institutions will be subject to detailed review at least once every five years.

64. We expect to focus on reviewing policies and procedures that have been updated since we reviewed them in the phase one initial assessment.

65. We may supplement a desk-based approach with other engagement with RHEBs to discuss with 'Prevent' lead officers, senior managers and governing body members or proprietors their understanding of and approach to implementing the 'Prevent' duty. (For HEFCE-funded institutions, we will seek to incorporate these visits into the existing cyclical programme of HEFCE assurance reviews, but this may not always be achievable

66. Follow-up and reporting of our reviews of detailed material will be the same as in phase one (see paragraphs 52 to 54).

Approach to handling on-campus incidents and third-party reports

67. HEFCE's role as monitoring authority does not extend to investigating 'Prevent' duty or terrorism-related incidents on campus. However, any such incident should lead the institution concerned to review its approach to the 'Prevent' duty: risk assessment, action plans, training, management and governance oversight may all need revision.

68. HEFCE's Memorandum of Assurance and Accountability with the institutions that we fund¹⁴ requires them to notify us of serious adverse events and, for those that are **exempt charities**, serious reportable incidents. In both cases the requirement includes issues that are suspected or alleged, and we expect to receive reports shortly after discovery. Apart from financial losses, what is 'serious' is a matter of judgment. The guidance on our website¹⁵ suggests that issues discussed by the institution's audit committee or governing body or reported to the police are likely to be reportable. RHEBs that are **registered charities** are subject to a similar obligation to report serious incidents to the Charity Commission. Both HEFCE and the Charity Commission include terrorism-related incidents as serious reportable incidents.

69. In addition to this existing obligation, we will require all RHEBs, including those that are not charities, to report to us, as well as to other relevant authorities, serious issues related to their 'Prevent' duty responsibilities as soon as possible after they occur. The guidance referred to in the link at footnote 15 suggests a number of indicators may help the body to determine if an issue is serious. The focus of the report – which should be addressed to HEFCE's Chief Executive – should be the impact on the RHEB's 'Prevent' duty programme. We will expect all RHEBs to include in their annual report a declaration that all such issues have been reported (see paragraph 60).

Consultation question 4

Are the requirements to report serious issues related to the 'Prevent' duty to HEFCE clear?
How can we improve them?

70. We may also receive reports from third parties that an RHEB is not fulfilling its 'Prevent' duty in some way. We will approach such reports in line with our normal public interest disclosure (whistleblowing) policy and procedure¹⁶, which will be updated to clarify

¹⁴ Available online at www.hefce.ac.uk/pubs/year/2014/201412/.

¹⁵ Available online at www.hefce.ac.uk/reg/charityreg/sir/.

¹⁶ Available online at www.hefce.ac.uk/reg/Notifications/pid/.

that it extends to ‘Prevent’ issues. We will ask the body concerned to investigate the matter and, if it is substantiated, we will expect a report on the consequences. As with incidents on campus, our interest will be to ensure that – as necessary – the RHEB has incorporated any lessons learned into its ‘Prevent’ duty programme.

71. Whether reported by the institution or a third party, if we conclude that the RHEB’s response was inadequate – and it does not agree further actions – we will consider whether this indicates non-compliance with the duty that needs to be reported to Government.

Reporting by HEFCE

72. At the time of this consultation, we have not finalised detailed arrangements about how we will report the outcomes of our assessments to BIS. However, we expect the reporting structure to broadly reflect the monitoring cycle for providers.

73. We envisage that we will provide an initial readiness report based on our analysis of the preliminary self-assessment returns, showing self-reported levels of compliance and highlighting any emerging themes and issues. We then expect to provide one or more fuller reports based on our analysis of the details received from every RHEB.

74. Thereafter we expect to report annually to BIS on the basis of the annual returns and information gathered from the cyclical review process.

75. We may report to BIS on an ad hoc basis where other circumstances apply, such as:

- a. Where we conclude that an RHEB is either not providing us required information or is not fulfilling its ‘Prevent’ duty, and efforts to resolve this have been unsuccessful.
- b. Where there are particular issues raised during the cyclical review process.
- c. Where there are particular concerns which mean that Government has asked for further assurance about an institution’s policies and procedures.

76. Where an RHEB is not providing information or is not fulfilling its responsibilities we understand that BIS will consider whether to forward such reports to the ‘Prevent’ Oversight Board – a Home Office committee which, among other things, advises the Home Secretary. (The Home Secretary has the power to issue directions¹⁷, although the ‘Prevent’ guidance states that this power will be used only when other options have been exhausted.)

Conclusion

77. At various points above we have asked specific questions about the proposed monitoring framework. We are also interested in any other comments you may wish to make. We would ask, however, that respondents limit their comments to the proposed framework and do not comment more widely on the Government’s ‘Prevent’ strategy.

Consultation question 5

Do you have any other comments about this proposed monitoring framework?

¹⁷ CTSA S30 and S33.

Annex A: Letter delegating the monitoring authority function to HEFCE

Dear Professor Atkins

Counter-Terrorism and Security Act 2015

Delegation of monitoring authority function to HEFCE

I write formally to give notice under section 32(4)(b) of the above Act to delegate to the Higher Education Funding Council for England (HEFCE) the function of 'monitoring authority' of 'relevant higher education bodies' in England with immediate effect. As monitoring authority, HEFCE's function will be to collect information from the relevant higher education bodies (RHEBs) to enable it to monitor those bodies' performance in discharging the duty imposed on them by section 26(1) of the Act. This duty – to have due regard to the need to prevent people from being drawn into terrorism – is known as the *Prevent* duty and will come into effect at a date yet to be approved by Parliament.

The term 'relevant higher education body' has the full meaning set out in section 32(1) of the Act. As well as higher education providers that HEFCE funds, it includes or will include other higher education providers with designation to enable their students to access student loans, and a number of other entities. In all cases it is the governing body or proprietor of the RHEB that is responsible for discharging the *Prevent* duty. For the avoidance of doubt, most students' unions and societies are not subject to the *Prevent* duty; a small number that are not independent of their RHEB will – as part of the RHEB – be subject to the duty and monitoring requirements.

I will expect HEFCE to carry out its monitoring function in line with a monitoring framework that will, among other things:

- a. Set out the new *Prevent* duty as it will apply to RHEBs, including its relationship to the duty of freedom of speech and the importance of academic freedom on campus.
- b. Outline the respective roles of the Home Office (including its responsibility to publish guidance on the *Prevent* duty), BIS (including the regional further and higher education *Prevent* coordinators) and HEFCE.
- c. Set out the information that HEFCE will require from RHEBs, whether on a one-off or regular basis.
- d. Explain the consequences for any RHEB that does not provide requested information on a timely basis.
- e. Explain the consequences for any RHEB whose information is considered by HEFCE to indicate that the RHEB is not fulfilling its S26(1) *Prevent* duty.

For the purpose of paragraph 3a above, I welcome all RHEBs having regard to the need to ensure freedom of speech on campus and the importance of academic freedom, whether or not they are legally bound to do so, and HEFCE should exercise its functions as monitoring authority accordingly.

I expect HEFCE to undertake appropriate conversations with RHEBs and other stakeholders before publishing the monitoring framework. I acknowledge that the requirements for the first monitoring period or cycle will require the submission and review of information that HEFCE does not currently receive from RHEBs. However, while expecting HEFCE to require RHEBs to demonstrate a high standard of active compliance, I hope HEFCE will be able to use and build on its existing monitoring and oversight processes as much as possible, particularly in subsequent cycles.

I will expect HEFCE to review the effectiveness of the framework – probably during the first quarter of 2017 – and to make changes, if considered desirable, in the light of the review's findings.

I will expect HEFCE to report to me at appropriate intervals on progress in establishing its monitoring role and on the levels of compliance by RHEBs with the 'Prevent' duty. The frequency and timing of reports will be influenced by the processes and deadlines in the monitoring framework. I will therefore agree a reporting schedule with you once the framework is established and again following its review in 2017.

It is an important new function for HEFCE to help the Government deliver its counter-terrorism strategy and I intend that you should be properly resourced to carry it out. Accordingly, I will write soon with more detail to set out the resource we can make available to cover the costs of developing the monitoring framework and the early stages of monitoring activity.

SAJIV JAVID

Secretary of State for Business, Innovation and Skills

21 August 2015

Annex B: Relevant higher education bodies subject to the ‘Prevent’ duty, the freedom of speech duty, and academic freedom principles

1. For the purposes of the Counter-Terrorism and Security Act 2015 (the Act) and, therefore, of this monitoring framework, a relevant higher education body (RHEB) is the governing body or proprietor of an institution in England that is either:
 - a. A qualifying institution within the meaning of section 11 of the Higher Education Act 2004.
 - b. An institution at which more than 250 students are undertaking courses of a description mentioned in Schedule 6 of the Education Reform Act 1988 (higher education courses).
2. In Table 1 below, the column headed **‘Prevent’ duty** identifies the various categories of institution covered by section 11 of the Higher Education Act 2004. Institutions covered by that section are subject to the ‘Prevent’ duty regardless of their student numbers. The 250 student number criterion applies only to the institutions providing higher education in the context of Schedule 6 of the Education Reform Act 1988.
3. To illustrate the complexities this creates, we note that:
 - a. The phrase ‘college, school and hall of a university’ includes the autonomous colleges at Cambridge, Durham and Oxford Universities.
 - b. Most of the affiliates of the Conservatoire of Dance and Drama are not covered by that phrase because the Conservatoire is not a university. Those affiliates will however be subject to the ‘Prevent’ duty if they have more than 250 students because they provide higher education covered by Schedule 6 of the Education Reform Act.
 - c. Alternative providers with specific course designation were brought within section 11 on 1 September 2015, when Chapter 4 of Part 3 of the Consumer Rights Act 2015 came into effect.
 - d. Other alternative providers will only be covered be subject to the ‘Prevent’ duty if they have more than 250 students.
 - e. Where the 250 student threshold applies it does not include students on distance learning courses.
 - f. In the absence of further definition, HEFCE has been advised that the 250 student threshold is a headcount measure, not a full-time equivalent measure.
4. During the consultation on the proposed monitoring framework, HEFCE will contact a wide range of higher education providers. Any who feel that the ‘Prevent’ duty does not apply to them should mention this in the comments box at the end of the second page of the online response form.
5. A further complication arises because the Act requires that only some – but not the same – institutions in column one of Table 1 are also required to have particular regard to the duty to ensure freedom of speech on campus and to the importance of academic freedom. Columns two and three of Table 1 show which institutions have those duties.

Table 1: Legal definitions of relevant higher education bodies for the purposes of the Counter-Terrorism and Security Act 2015

'Prevent' duty	Freedom of speech duty	Importance of academic freedom
Defined in S 26(2) and Schedule 6 CTSA 2015 as:	Defined in S43(1) E2A 1986 as:	Defined in S202(3) ERA 1988 as:
A qualifying institution under S11 HEA 2004. Qualifying institutions are:	Any university (including any university college in a university (and any college or institution in the nature of a college in a university)).	A qualifying institution:
<p>A university (whether or not receiving financial support under S65 FHEA 1992) with the right to grant awards confirmed by:</p> <ul style="list-style-type: none"> • Act of Parliament • Royal Charter • S76 FHEA 1992 order. 	Any other institution within the higher education sector. [See note 1 below this table.]	Any university or other institution funded by [the University Grants Committee] in the three years from 1 August 1987 to 31 July 1990.
A constituent college, school or hall or other institution of [an above] university.		Any constituent college, school, or hall or other institution of [an above] university.
A higher education corporation.		Any other institution with chartered power to grant degrees which received grants from the Secretary of State in the three years from 1 August 1987 to 31 July 1990.
An institution designated under S72(3) FHEA 1992.		
An institution providing [higher education] courses designated under S22 THEA 1998 ¹⁸ .		
An institution with the right to grant awards by virtue of an order under S76(1) FHEA 1992.		

¹⁸ Introduced by the Consumer Rights Act 2015 with effect from 1 September 2015.

'Prevent' duty		
Any other institution at which more than 250 students undertake [higher education] courses under Schedule 6 ERA1988 ¹⁹ . [See note 2 below this table.]		

Key to abbreviations of statutes:

CTSA 2015	Counter-Terrorism and Security Act 2015
EA 1986	Education Act 1986
E2A 1986	Education (No 2) Act 1986
ERA 1988	Education Reform Act 1988
FHEA 1992	Further and Higher Education Act 1992
HEA 2004	Higher Education Act 2004
THEA 1998	Teaching and Higher Education Act 1998

Notes:

1. S4(3) EA 1986 defines the higher education sector as comprising:
 - a. a university receiving financial support under S65 FHEA 1992
 - b. a higher education corporation
 - c. an institution designated under S72(3) FHEA 1992.
2. Schedule 6 ERA1988 describes higher education courses as:
 - a. a course for the further training of teachers or youth and community workers
 - b. a post-graduate course (including a higher degree course)
 - c. a first degree course
 - d. a course for a Diploma of Higher Education
 - e. a course for the Higher National Diploma or Higher National Certificate of the Business & Technician Education Council (BTEC), or the Diploma in Management Studies
 - f. a course for the Certificate of Education
 - g. a course in preparation for a professional examination at a higher level (above A-level or BTEC National Certificate or Diploma)
 - h. a course providing education at a higher level (as in g. but whether or not in preparation for an examination).

¹⁹ This group includes further education corporations – for which HEFCE is not the monitoring authority.

Annex C: ‘Prevent’ duty guidance relevant to higher education

The full Home Office guidance can be found under ‘Prevent duty guidance for England and Wales’ at <https://www.gov.uk/government/publications/prevent-duty-guidance>. The two documents relevant to the higher education sector in England are:

- Revised ‘Prevent’ Duty Guidance: for England and Wales) Sections A to D (pages 2 to 5)²⁰
- ‘Prevent’ Duty Guidance: for higher education institutions in England and Wales²¹.

These are reproduced below.

Revised ‘Prevent’ Duty Guidance: for England and Wales, Sections A to D (pages 2 to 5) (16 July 2015)

A. Status and scope of the duty

Statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015.

1. Section 26 of the Counter-Terrorism and Security Act 2015 (the Act) places a duty on certain bodies (‘specified authorities’ listed in Schedule 6 to the Act), in the exercise of their functions, to have ‘due regard to the need to prevent people from being drawn into terrorism’. This guidance is issued under section 29 of the Act. The Act states that the authorities subject to the provisions must have regard to this guidance when carrying out the duty.
2. The list of specified authorities subject to the provisions can be found in Schedule 6 to the Act. Further details can be found in the sector-specific sections of this guidance.
3. The duty applies to specified authorities in England and Wales, and Scotland. Counter terrorism is the responsibility of the UK Government. However, many of the local delivery mechanisms in Wales and Scotland, such as health, education and local government, are devolved. We will ensure close cooperation with the Scottish and Welsh Governments in implementing the ‘Prevent’ duty where there are interdependencies between devolved and non-devolved elements. There is separate guidance for specified authorities in Scotland.
4. The duty does not confer new functions on any specified authority. The term ‘due regard’ as used in the Act means that the authorities should place an appropriate amount of weight on the need to prevent people being drawn into terrorism when they consider all the other factors relevant to how they carry out their usual functions. This purpose of this guidance is to assist authorities to decide what this means in practice.

²⁰

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance_England_Wales_V2-Interactive.pdf.

²¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445916/Prevent_Duty_Guidance_For_Higher_Education_England_Wales_.pdf.

B. Introduction

5. The 'Prevent' strategy, published by the Government in 2011, is part of our overall counter-terrorism strategy, CONTEST. The aim of the 'Prevent' strategy is to reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism. In the Act this has simply been expressed as the need to 'prevent people from being drawn into terrorism'.
6. The 2011 'Prevent' strategy has three specific strategic objectives:
 - respond to the ideological challenge of terrorism and the threat we face from those who promote it;
 - prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; and
 - work with sectors and institutions where there are risks of radicalisation that we need to address.
7. Terrorist groups often draw on extremist ideology, developed by extremist organisations. Some people who join terrorist groups have previously been members of extremist organisations and have been radicalised by them. The Government has defined extremism in the 'Prevent' strategy as: 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces'.
8. The 'Prevent' strategy was explicitly changed in 2011 to deal with all forms of terrorism and with non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit. It also made clear that preventing people becoming terrorists or supporting terrorism requires challenge to extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups. And the strategy also means intervening to stop people moving from extremist (albeit legal) groups into terrorist-related activity.
9. Our 'Prevent' work is intended to deal with all kinds of terrorist threats to the UK. The most significant of these threats is currently from terrorist organisations in Syria and Iraq, and Al Qa'ida associated groups. But terrorists associated with the extreme right also pose a continued threat to our safety and security.
10. Islamist extremists regard Western intervention in Muslim-majority countries as a 'war with Islam', creating a narrative of 'them' and 'us'. Their ideology includes the uncompromising belief that people cannot be both Muslim and British, and that Muslims living here should not participate in our democracy. Islamist extremists specifically attack the principles of civic participation and social cohesion. These extremists purport to identify grievances to which terrorist organisations then claim to have a solution.
11. The white supremacist ideology of extreme right-wing groups has also provided both the inspiration and justification for people who have committed extreme right-wing terrorist acts.
12. In fulfilling the duty in section 26 of the Act, we expect all specified authorities to participate fully in work to prevent people from being drawn into terrorism. How they do this,

and the extent to which they do this, will depend on many factors, for example, the age of the individual, how much interaction they have with them, etc. The specified authorities in Schedule 6 to the Act are those judged to have a role in protecting vulnerable people and/or our national security. The duty is likely to be relevant to fulfilling other responsibilities such as the duty arising from section 149 of the Equality Act 2010.

13. This guidance identifies best practice for each of the main sectors and describes ways in which they can comply with the duty. It includes sources of further advice and provides information on how compliance with the duty will be monitored.

C. A risk-based approach to the ‘Prevent’ duty

14. In complying with the duty all specified authorities, as a starting point, should demonstrate an awareness and understanding of the risk of radicalisation in their area, institution or body. This risk will vary greatly and can change rapidly; but no area, institution or body is risk free. Whilst the type and scale of activity that will address the risk will vary, all specified authorities will need to give due consideration to it.

15. There are three themes throughout the sector-specific guidance, set out later in this document: effective leadership, working in partnership and appropriate capabilities.

Leadership

16. For all specified authorities, we expect that those in leadership positions:

- establish or use existing mechanisms for understanding the risk of radicalisation;
- ensure staff understand the risk and build the capabilities to deal with it;
- communicate and promote the importance of the duty; and
- ensure staff implement the duty effectively

Working in partnership

17. ‘Prevent’ work depends on effective partnership. To demonstrate effective compliance with the duty, specified authorities must demonstrate evidence of productive co-operation, in particular with local ‘Prevent’ co-ordinators, the police and local authorities, and co-ordination through existing multi-agency forums, for example Community Safety Partnerships.

Capabilities

18. Frontline staff who engage with the public should understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it. They need to be aware of what we mean by the term ‘extremism’ and the relationship between extremism and terrorism (see section B, above).

19. Staff need to know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it. They need to understand how to obtain support for people who may be being exploited by radicalising influences.

20. All specified authorities subject to the duty will need to ensure they provide appropriate training for staff involved in the implementation of this duty. Such training is now widely available.

Sharing information

21. The 'Prevent' programme must not involve any covert activity against people or communities. But specified authorities may need to share personal information to ensure, for example, that a person at risk of radicalisation is given appropriate support (for example on the Channel programme). Information sharing must be assessed on a case-by-case basis and is governed by legislation. To ensure the rights of individuals are fully protected, it is important that information sharing agreements are in place at a local level. When considering sharing personal information, the specified authority should take account of the following:

- necessity and proportionality: personal information should only be shared where it is strictly necessary to the intended outcome and proportionate to it. Key to determining the necessity and proportionality of sharing information will be the professional judgement of the risks to an individual or the public;
- consent: wherever possible the consent of the person concerned should be obtained before sharing any information about them;
- power to share: the sharing of data by public sector bodies requires the existence of a power to do so, in addition to satisfying the requirements of the Data Protection Act 1998 and the Human Rights Act 1998;
- Data Protection Act and the Common Law Duty of Confidentiality: in engaging with non-public bodies, the specified authority should ensure that they are aware of their own responsibilities under the Data Protection Act and any confidentiality obligations that exist.

22. There may be some circumstances where specified authorities, in the course of 'Prevent' related work, identify someone who may already be engaged in illegal terrorist-related activity. People suspected of being involved in such activity must be referred to the police.

D. Monitoring and enforcement

23. All specified authorities must comply with this duty and will be expected to maintain appropriate records to show compliance with their responsibilities and provide reports when requested.

Central support and monitoring

24. The Home Office currently oversees 'Prevent' activity in local areas which have been identified as priorities for this programme, and will provide central monitoring for the new duty. The Home Office shares management (with local authorities) of local 'Prevent' coordinator teams.

25. The Home Office will:

- draw together data about implementation of 'Prevent' from local and regional 'Prevent' co-ordinators (including those in health, further and higher education), the

police, intelligence agencies and other departments and inspection bodies where appropriate

- monitor and assess 'Prevent' delivery in up to 50 'Prevent' priority areas;
- maintain contact with relevant departments and escalate issues to them and inspectorates where appropriate;
- support the 'Prevent' Oversight Board, chaired by the Minister for Immigration and Security, which may agree on further action to support implementation of the duty.

26. Where a specified body is not complying with the duty, the 'Prevent' Oversight Board may recommend that the Secretary of State use the power of direction under section 30 of the Act. This power would only be used when other options for engagement and improvement had been exhausted. The power would be used only to ensure the implementation and delivery of the 'Prevent' duty. It is also capable of being exercised in respect of Welsh specified authorities, and would be used following consultation with Welsh Ministers.

Inspection regime in individual sectors

27. Central support and monitoring will be supported by existing inspection regimes in specific sectors. Not every specified authority has a suitable inspection regime and in some areas it may be necessary to create or enhance existing regimes.

28. We will work with the Welsh Government on 'Prevent' monitoring arrangements and provide support to Welsh inspection regimes as required.

'Prevent' Duty Guidance: for higher education institutions in England and Wales

This sector specific guidance for higher education institutions in England and Wales subject to the 'Prevent' duty is additional to, and is to be read alongside, the general guidance contained in the Revised 'Prevent' Duty Guidance issued on 16 July 2015.

Higher education

1. Section 26(1) of the Counter-Terrorism and Security Act 2015 ('the Act') imposes a duty on 'specified authorities', when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism. Certain higher education bodies ('Relevant Higher Education Bodies' or 'RHEBs') are subject to the S26 duty. RHEBs' commitment to freedom of speech and the rationality underpinning the advancement of knowledge means that they represent one of our most important arenas for challenging extremist views and ideologies. But young people continue to make up a disproportionately high number of those arrested in this country for terrorist-related offences and of those who are travelling to join terrorist organisations in Syria and Iraq. RHEBs must be vigilant and aware of the risks this poses.

2. Some students may arrive at RHEBs already committed to terrorism; others may become radicalised while attending a RHEB due to activity on campus; others may be radicalised whilst they are at a RHEB but because of activities which mainly take place off campus.

Higher education specified authorities

3. The higher education institutions specified in Schedule 6 to the Act fall into two categories:
 - the governing body of qualifying institutions within the meaning given by section 11 of the Higher Education Act 2004.
 - private higher education institutions that are not in receipt of public funding from the Higher Education Funding Council for England (HEFCE) or the Higher Education Funding Council Wales (HEFCW) but have similar characteristics to those that are. This includes governing bodies or proprietors of institutions not otherwise listed that have at least 250 students, excluding students on distance learning courses, undertaking courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).
4. Most of these institutions already have a clear understanding of their 'Prevent' related responsibilities. Institutions already demonstrate some good practice in these areas. We do not envisage the new duty creating large new burdens on institutions and intend it to be implemented in a proportionate and risk-based way.
5. Compliance with the 'Prevent' duty requires that properly thought through procedures and policies are in place. Having procedures and policies in place which match the general expectations set out in this guidance will mean that institutions are well placed to comply with the 'Prevent' duty. Compliance will only be achieved if these procedures and policies are properly followed and applied. This guidance does not prescribe what appropriate decisions would be – this will be up to institutions to determine, having considered all the factors of the case.
6. We would expect RHEBs to be delivering in the following areas.

External speakers and events

7. In order to comply with the duty all RHEBs should have policies and procedures in place for the management of events on campus and use of all RHEB premises. The policies should apply to all staff, students and visitors and clearly set out what is required for any event to proceed.
8. The RHEB clearly needs to balance its legal duties in terms of both ensuring freedom of speech and academic freedom, and also protecting student and staff welfare. Although it predates this legislation, Universities UK produced guidance in 2013 to support institutions to make decisions about hosting events and have the proper safeguards in place:
www.universitiesuk.ac.uk/highereducation/Pages/Externalspeakersinhighereducationinstitutions.aspx.
9. The Charity Commission also produced guidance on this matter in 2013:
<https://www.gov.uk/government/publications/charities-and-terrorism>
and
https://www.gov.uk/government/uploads/attachment_data/file/351342/CT-5.pdf.
10. Encouragement of terrorism and inviting support for a proscribed terrorist organisation are both criminal offences. RHEBs should not provide a platform for these offences to be committed.

11. Furthermore, when deciding whether or not to host a particular speaker, RHEBs should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event. This includes ensuring that, where an event is being allowed to proceed, speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that event, rather than in a separate forum. Where RHEBs are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed.

12. We would expect RHEBs to put in place a system for assessing and rating risks associated with any planned events, which provides evidence to suggest whether an event should proceed or be cancelled or whether action is required to mitigate any risk. There should also be a mechanism in place for assessing the risks associated with any events which are RHEB affiliated, funded or branded but which take place off-campus and for taking swift and appropriate action as outlined in paragraph 11 [of this annex].

13. Additionally, institutions should pay regard to their existing responsibilities in relation to gender segregation, as outlined in the guidance produced in 2014 by the Equality and Human Rights Commission:

www.equalityhumanrights.com/publication/gender-segregation-events-and-meetings-guidance-universities-and-students-unions.

14. RHEBs should also demonstrate that staff involved in the physical security of the institution's estate have an awareness of the 'Prevent' duty. In many instances, this could be achieved through engagement with the Association of University Chief Security Officers (AUCSO). Where appropriate and legal to do so, an institution should also have procedures in place for the sharing of information about speakers with other institutions and partners.

15. But managing the risk of radicalisation in RHEBs is not simply about managing external speakers. Radicalised students can also act as a focal point for further radicalisation through personal contact with fellow students and through their social media activity. Where radicalisation happens off campus, the student concerned may well share his or her issues with other students. Changes in behaviour and outlook may be visible to university staff. Much of this guidance therefore addresses the need for RHEBs to have the necessary staff training, IT policies and student welfare programmes to recognise these signs and respond appropriately.

Partnership

16. In complying with this duty we would expect active engagement from senior management of the university (including, where appropriate, vice-chancellors) with other partners including police and BIS regional higher and further education 'Prevent' coordinators. We would expect institutions to seek to engage and consult students on their plans for implementing the duty.

17. Given the size and complexity of most institutions we would also expect RHEBs to make use of internal mechanisms to share information about 'Prevent' across the relevant faculties of the institution. Having a single point of contact for operational delivery of 'Prevent' related activity may also be useful.

18. We would expect institutions to have regular contact with the relevant 'Prevent' co-ordinator. These co-ordinators will help RHEBs comply with the duty and can provide advice and guidance on risk and on the appropriate response. The contact details of these co-ordinators are available on the Safe Campus Communities website:
www.safecampuscommunities.ac.uk.

Risk assessment

19. RHEBs will be expected to carry out a risk assessment for their institution which assesses where and how their students might be at risk of being drawn into terrorism. This includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit. Help and support will be available to do this.

20. We would expect the risk assessment to look at institutional policies regarding the campus and student welfare, including equality and diversity and the safety and welfare of students and staff. We would also expect the risk assessment to assess the physical management of the university estate including policies and procedures for events held by staff, students or visitors and relationships with external bodies and community groups who may use premises, or work in partnership with the institution.

Action plan

21. With the support of co-ordinators, and others as necessary, any institution that identifies a risk should develop a 'Prevent' action plan to institution to set out the actions they will take to mitigate this risk.

Staff training

22. Compliance with the duty will also require the institution to demonstrate that it is willing to undertake 'Prevent' awareness training and other training that could help the relevant staff prevent people from being drawn into terrorism and challenge extremist ideas which risk drawing people into terrorism. We would expect appropriate members of staff to have an understanding of the factors that make people support terrorist ideologies or engage in terrorist-related activity. Such staff should have sufficient training to be able to recognise vulnerability to being drawn into terrorism, and be aware of what action to take to take in response. This will include an understanding of when to make referrals to the Channel programme and where to get additional advice and support.

23. We would expect the institution to have robust procedures both internally and externally for sharing information about vulnerable individuals (where appropriate to do so). This should include appropriate internal mechanisms and external information sharing agreements where possible.

24. BIS offers free training for higher and further education staff through its network of regional higher and further education 'Prevent' co-ordinators. This covers safeguarding and identifying vulnerability to being drawn into terrorism and can be tailored to suit each institution or group of individuals Welfare and pastoral care/chaplaincy support.

25. RHEBs have a clear role to play in the welfare of their students and we would expect there to be sufficient chaplaincy and pastoral support available for all students.

26. As part of this, we would expect the institution to have clear and widely available policies for the use of prayer rooms and other faith-related facilities. These policies should outline arrangements for managing prayer and faith facilities (for example an oversight committee) and for dealing with any issues arising from the use of the facilities.

IT policies

27. We would expect RHEBs to have policies relating to the use of university IT equipment. Whilst all institutions will have policies around general usage, covering what is and is not permissible, we would expect these policies to contain specific reference to the statutory duty. Many educational institutions already use filtering as a means of restricting access to harmful content, and should consider the use of filters as part of their overall strategy to prevent people from being drawn into terrorism.

28. To enable the university to identify and address issues where online materials are accessed for non-research purposes, we would expect to see clear policies and procedures for students and staff working on sensitive or extremism-related research. Universities UK has provided guidance to help RHEBs manage this, which is available at:

www.universitiesuk.ac.uk/highereducation/Pages/OversightOfSecuritySensitiveResearchMaterial.aspx.

Student unions and societies

29. Institutions should have regard to the duty in the context of their relationship and interactions with student unions and societies. They will need to have clear policies setting out the activities that are or are not allowed to take place on campus and any online activity directly related to the university. The policies should set out what is expected from the student unions and societies in relation to 'Prevent' including making clear the need to challenge extremist ideas which risk drawing people into terrorism. We would expect student unions and societies to work closely with their institution and cooperate with the institutions' policies.

30. Student unions, as charitable bodies, are registered with the Charity Commission and subject to charity laws and regulations, including those that relating to preventing terrorism. Student unions should also consider whether their staff and elected officers would benefit from 'Prevent' awareness training or other relevant training provided by the Charity Commission, regional 'Prevent' co-ordinators or others.

Monitoring and enforcement

31. The Secretary of State will appoint an appropriate body to assess the bodies' compliance with the 'Prevent' duty. A separate monitoring framework will be published setting out the details of how this body will undertake monitoring of the duty.

Annex D: ‘Prevent’ duty compliance: Proposed preliminary self-assessment report

Name of institution..... UK Provider Reference Number.....

Authorised by (name, position).....

Signature..... Date.....

Factor in the ‘Prevent’ duty guidance	Self-assessment rating (A to E)	Comments
a. Arrangements for senior management and governance oversight of the implementation of the institution’s ‘Prevent’ duty obligations and engagement with ‘Prevent’ partners.		
b. ‘Prevent’ risk assessment.		
c. Action plan in response to that risk assessment.		
d. Arrangements for engaging with and consulting students on the institution’s plans for implementing the ‘Prevent’ duty.		
e. Staff training plan.		
f. Arrangements for sharing information internally and externally about vulnerable individuals.		
g. Code of practice for ensuring freedom of speech on campus.		
h. Arrangements to protect the importance of academic freedom.		
i. Policies and procedures for approving external speakers and events on campus.		

j. Policies and procedures for approving RHEB-branded events taking place off campus.		
k. Procedures for sharing information about external speakers with other institutions.		
l. Arrangements to ensure sufficient pastoral care and chaplaincy support for all students (including arrangements for managing prayer and faith facilities).		
m. Policies for use of the institution's computer facilities (hardware, software, networks, social media), to include filtering arrangements and management of academic activities that might require access to sensitive or terrorism-related material.		
n. Policies for engaging with students' unions and societies (which are not subject to the 'Prevent' duty, but are expected to cooperate with their institution).		

Rating scale:

- A** Policies and processes have been documented. They have been reviewed, updated, approved in last three months, and are active. They fully satisfy the Government's 'Prevent' duty guidance.
- B** Policies and processes have been documented. They have been reviewed, updated, approved in the last year, and active. They may satisfy the Government's 'Prevent' duty guidance.
- C** Policies and processes have been documented, but need to be reviewed against the Government's 'Prevent' duty guidance.
- D** Policies and processes have been drafted, but not yet approved.
- E** Policies and processes have not been prepared yet.

Annex E: List of consultation questions and related information

Please respond to this consultation by **noon on Friday 23 October 2015** online at <https://www.surveymonkey.com/r/preventduty>.

Q1	Do you consider the proposed self-assessment scale to be clear and to provide a suitable basis for a preliminary self-assessment of your institution's preparedness for the 'Prevent' duty? How can we improve on the wording?
Q2	Given the statutory guidance on the 'Prevent' duty, are the factors in paragraph 50 a reasonable basis for HEFCE's initial assessment of compliance by RHEBs? What other factors should be included, and why?
Q3	Is the proposed content of the 'Prevent' duty annual report and the three declarations clear? How can we improve it?
Q4	Are the requirements to report serious issues related to the 'Prevent' duty to HEFCE clear? How can we improve them?
Q5	Do you have any other comments about this proposed monitoring framework?

Responding to this consultation

1. Since the 'Prevent' duty is already in force, we have limited the consultation period to enable us to publish the final framework as soon as possible. We have however discussed the proposals in advance of the consultation with a number of individual RHEBs and with sector representative bodies, including Universities UK, GuildHE, Study UK and the Association of Heads of University Administration. We have also arranged for and funded events and training activities for senior managers and members of governing bodies, to be carried out by the Leadership Foundation for Higher Education. In addition, we will hold a number of meetings and engagement events with RHEBs during the consultation period. Further information will shortly be available about these at: www.hefce.ac.uk/reg/prevent/events/.

Freedom of Information Act

2. Information provided in response to this consultation may be made public, under the terms of the Freedom of Information Act or of an appropriate licence, or through another arrangement.

3. Such information includes text, data and datasets. The Freedom of Information Act gives a public right of access to any information held by a public authority defined within the Act, in this case HEFCE. It applies to information provided by individuals and organisations, for example universities and colleges. HEFCE can refuse to make such information available only in exceptional circumstances. This means that data and information are unlikely to be treated as confidential except in very particular circumstances.

Analysis of responses

4. HEFCE will commit to read, record and analyse the views of every response to this consultation in a consistent manner. For reasons of practicality, usually a fair and balanced summary of responses rather than the individual responses themselves will inform any decision made. In most cases, the merit of arguments made is likely to be given more weight than the number of times the same point is made. Responses from organisations or representative bodies which have high relevance or interest in the area under consultation, or are likely to be affected most by the proposals, are likely to carry more weight than those with little or none.

Publication

5. We will publish an analysis of the consultation responses and an explanation of how they were considered in our subsequent decision. Where we have not been able to respond to a significant and material issue raised, we will usually explain the reasons for this. It is our intention to publish all consultation responses when we publish our analysis. If you have any concerns about the publication of your response please ensure that you advise us of this in the comments box at the end of the second page of the online response form.

Glossary and abbreviations

Channel Panels

'Channel' is an early intervention multi-agency process designed to safeguard vulnerable people from being drawn into violent extremist or terrorist behaviour. Channel Panels chaired by local authorities bring together multi-agency partners to collectively assess the risk for an individual and can decide whether a support package is needed.

Counter-Terrorism and Security Act 2015 (the Act), also abbreviated as CTSA

The Act introduced a package of measures aimed at countering the risk of terrorism and radicalisation. Part 5 of the Act deals with the risk of people being drawn into terrorism and introduced the statutory 'Prevent' duty for a range of public and other bodies.

Department for Business, Innovation and Skills (BIS)

The department of UK government with ultimate responsibility for higher education in England. It was formed in June 2009 from the Department for Innovation, Universities and Skills and the Department for Business, Enterprise and Regulatory Reform.

Higher education (HE)

Higher education courses are programmes leading to qualifications, or credits which can be counted towards qualifications, which are above the standard of GCE A-levels or other Level 3 qualifications. They include degree courses, postgraduate courses and sub-degree courses such as those leading to HNCs or HNDs. (See also Annex B.)

Higher Education Funding Council for England (HEFCE)

HEFCE is the lead regulator for higher education in England. Our work in this area covers assessing the quality of the education that we fund, charity regulation and a limited role in assisting the Government to operate its regulatory function for alternative providers. From 2015 HEFCE has the additional responsibility to monitor compliance with the 'Prevent' duty by RHEBs. A fuller description of our role is at www.hefce.ac.uk/about/role/.

Memorandum of Assurance and Accountability

An agreement between HEFCE and higher education institutions it funds that sets out the terms and conditions for payment of HEFCE grants.

Relevant higher education body (RHEB)

This term covers a range of different institutions that provide higher education. In all cases the Act refers to the governing body or proprietor as having ultimate responsibility. We have identified three distinct groups of relevant body, based on the extent to which HEFCE already engages with them:

- **Higher education providers that we fund directly**, and are subject to our full accountability oversight arrangements (HEFCE-funded providers).

- **Providers that are subject to specific course designation processes operated by HEFCE** in order to provide advice to the Department for Business, Innovation and Skills (BIS) (Alternative providers with specific course designation).
- **Other institutions** with which HEFCE has typically had little or no direct contact (Other institutions).

It **does not** include schools, sixth form colleges, further education corporations, students' unions or student societies.